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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,869	11/05/2003	Todd M. Goin	200310588-1	6726

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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

TRAN, NGHI V

ART UNIT	PAPER NUMBER
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2451

NOTIFICATION DATE	DELIVERY MODE
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12/29/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/701,869	Applicant(s) GOIN ET AL.	
	Examiner NGHI V. TRAN	Art Unit 2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed on November 13, 2008. Claims 1, 2, 9, 10, 17, and 18 have been amended. No claims have been canceled. No claims have been added. Therefore, claims 1-20 are presented for further examination.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 17-20 are rejected under 35 U.S.C. 101 because of the following reasons:

4. Claim 17 is directly not limited to “functional descriptive material” because claims 1 and 14 are directly and/or indirectly to a computer program and/or a computer software application. According to “Patent Eligibility Guidelines 35 USC 101”, pages 50-51, and according to MPEP 2106 page 2100-2012, a computer program is directed to non-statutory subject matter. For example, the Interim Guidelines recites “When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory...” the claim 17 recites “A system ... means for ...; means for; .. and means for...” (emphasis added) are directed to non-statutory subject matter because claim 17 is just

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limited to computer program and computer application per se, instead being defined as including structurally and functionally interrelated to the medium.

5. Claims 18-20 are also rejected under 35 U.S.C. 101 because they are directly on independent claim 17.

Continued Examination Under 37 CFR 1.114

6. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 13, 2008 has been entered.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diao et al., United States Patent Application Publication Number 2005/0086645 (hereinafter Diao), in view of Carlson et al., United States Patent Application Publication Number 2003/0135609 (hereinafter Carlson).

9. With respect to claims 1, 9, 11, 13-18, and 20, Diao teaches a method of adjusting relative value of implemented computer configuration changes [see abstract], the method comprising:

- identifying computer configuration changes [= configuration change, paragraphs 0050-0051] in a computer system [= at least one computing system, paragraph 0006], the computer configuration changes being identified by using a configuration tracking application [= monitoring the performance goals] installed either locally on the computer system or on a network on which the computer system is communicatively connected [paragraphs 0020, 0034, 0041, 0049, 0059, and 0061-0062];
- obtaining performance metrics [= obtaining the one or more generically-expressed performance metric, paragraph 0008] for the computer system before [= obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration, paragraph 0008] and after computer configuration changes [= getting and/or updating performance report, step 210 of fig.2A, after the generically change configuration, step 250 of fig.2A] implemented in the computer system

- [fig.2A], the performance metrics being obtained [= obtain performance goal, step 221 of fig.2C] by a performance collector application installed on the computer system [= a performance report may be obtained, paragraph 0059 and figs.2&4]; and
- assessing effectiveness of the computer configuration changes based on the obtained performance metrics [= cause a change in the one or more configurations of the one or more resources based on the performance metric evaluation step, paragraph 0012], weight effectiveness of the identified implementation changes [= POOR and/or GOOD at evaluate performance step 220 of fig.2A] that represents the performance improvement based on implementation of each of the computer configuration changes as compared [= control logic 124 compares the system and/or individual resource performance] to performance improvements from other configuration changes [= a change in configuration parameters to improve overall system performance, paragraph 0050].

However, Diao does not explicitly show assigning a weight value that represents a relative value of performance.

In a configuration method, Carlson discloses assigning a weight value [= values for the service level parameters] that represents a relative value of performance [see abstract]

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by assigning a weight

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value that represents a relative value of performance because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023].

10. With respect to claim 2, Diao does not explicitly show increasing priority values for computer configuration changes resulting in performance improvements, the priority values being used for priority of the computer configuration changes in future recommendation sets.

In a configuration method, Carlson discloses increasing [= increase priority for the service level] priority values [= priority level] for computer configuration changes resulting in performance improvements, the priority values being used for priority of the computer configuration changes in future recommendation sets [= to recommend changes to the configuration based on the service metrics and the load characteristics measured by the service monitor, paragraphs 0022 and 0126-0132] and receiving a user input with respect to which ones of a plurality of collectors [= administrator may obtain more information about the configuration policy parameter for the selected configuration policy, paragraph 0084-0089] are to be utilized to obtain the performance metrics for the computer system, the plurality of collectors providing an additional role of running tests [= beta testing of the element configuration policy, paragraph 0096] on various components of the network [fig.18 and paragraphs 0130-0135].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by increasing priority values for computer configuration changes resulting in performance improvements in future recommendation sets because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023].

11. With respect to claim 3, Diao does not explicitly show classifying computer configuration changes not resulting in performance improvements as secondary recommendations in future recommendation sets.

In a configuration method, Carlson discloses classifying computer configuration changes [= specifying service level attributes such as service level metrics, paragraph 0096] not resulting in performance improvements as secondary recommendations in future recommendation sets [paragraphs 0094-0099].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by classifying computer configuration changes because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been

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motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023].

12. With respect to claim 4, Diao further teaches removing computer configuration changes not resulting in performance improvements from future recommendation sets [= modifying and/or updating to change configuration, paragraphs 0052-0053].

13. With respect to claim 5, Diao further teaches summarizing recommended actions identified for a computer user, configuration changes implemented, and the resulting change in performance [= a list of configuration parameters, paragraphs 0051-0053 and fig.2D].

14. With respect to claim 6, Diao further teaches providing a report with performance trends on a plurality of computer systems where recommended configuration changes are not implemented [= a list of configuration parameters, paragraphs 0051-0053 and fig.2D].

15. With respect to claim 7, Diao further teaches analyzing computer metrics on the computer system and proposing configuration changes based on the analysis of computer metrics [= evaluate one or more performance metric associated with the one or more resources given one or more configurations of the one or more resources, paragraph 0012].

16. With respect to claim 8, Diao further teaches wherein obtaining performance metrics for the computer system before [= obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration, paragraph 0008] and after computer configuration changes [= getting and/or updating performance report, step 210 of fig.2A, after the generically change configuration, step 250 of fig.2A] comprises accessing stored computer metrics [= list of performance metrics, paragraph 0049] in a database [= database name, paragraph 0038].

17. With respect to claim 10, Diao further teaches programmed instructions configured to analyze the computer system and propose configuration changes based on the analysis [= evaluate one or more performance metric associated with the one or more resources given one or more configurations of the one or more resources, paragraph 0012].

18. With respect to claims 12 and 19, Diao further teaches programmed instructions configured to provide reports on implemented configuration changes [= a list of performance metrics, paragraph 0049].

Response to Arguments

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19. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi V. Tran whose telephone number is (571) 272-4067. The examiner can normally be reached on Monday-Thursday and every other Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Nghi Tran
Patent Examiner
Art Unit 2451

November 10, 2008

/John Follansbee/
Supervisory Patent Examiner, Art Unit 2451